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CRITICAL ANALYSIS OF PRESUMPTION OF INNOCENCE AND REVERSE BURDEN OF PROOF IN INDIA WITH COMPARATIVE STUDY

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INTRODUCTION:

"*Item quilbet presumitur innocens nisi probetur nocens*"[1]

(A person is presumed innocent until proven guilty)

The principle of Presumption of Innocence is a hallmark of Criminal Jurisprudence in Common Law Countries. Its justification lies in the socio-legal consequences of convicting an individual for the commission of a crime. This principle acts as protection against erroneous convictions and ensures that an accused is not oppressed by the immense power and resources of the State. Lying at the heart of criminal law, this principle is invaluable for protecting an accused in criminal trial, which is a contest between two unequal actors namely the State and the accused. It protects his fundamental liberty and human dignity.

In the Landmark Judgement of **Woolmington vs. DPP[2],** House of Lords of England through five-judge bench headed by Viscount Sankey L.C has held that, *"Throughout the web of English criminal law, one golden thread is always seen, that it is the duty of the prosecution to prove the prisoners guilt, subject to..... the defence of insanity and subject also to any statutory exception."* This decision has set the basic parameter for proof of guilt in criminal cases. Principles of burden of proof, which were vacillating till then were partly settled. It has settled rule of evidence that the burden of proving the guilt of accused is always on prosecution and only under exceptional situations, the rule can be relaxed. As a logical deduction of the above principle, it was recognised that in every criminal trial the accused

[1] Latin Maxim originally expressed by the French cardinal and canonical jurist Jean Lemoine
[2] **1935 AC 462 at 481**,

shall be presumed to be innocent until his guilt is proved and there cannot be any presumption of guilt. It is considered fundamental because, it is believed that allowing guilty to go free is better than convicting the innocent. This is essential in every civilised society and thus, the principle is worthy of paramount respect by both the legislature and the judiciary. It is often expressed in the phrase "presumed innocent until proven guilty."[3] The English jurist William Blackstone said that: “It is better that ten guilty persons escape than that one innocent suffers”[4]

STATEMENT OF PROBLEM:

Doctrine of presumption of innocence is a core value of criminal justice system, sustenance of which is necessary for protecting civilised democratic values in our country. Reverse burden clauses are only rules of necessity. In case of conflict between a cherished value and necessity, the former shall be given precedence. However, it became routine for legislations to pass laws containing reverse burden clauses, ignoring the importance of doctrine of presumption of innocence. Adding fuel to it, the degree of proof required to prove defence of the accused is stepped up from preponderance of probabilities to proof beyond reasonable doubt. Reverse burdens are not restricted to serious offences and it is extended to most trivial offences as well as regulatory breaches. This trend needs to be arrested and the reverse burden clauses which dicards the presumption of innocence and other rights of accused shall be reversed at the earliest. Hence this critical study on Presumption of Innocence and Reverse Burden of Proof in India with Comparative Approach.

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[3] The expression is firstly coined by the British barrister Sir William Garrow (1760–1840) during a 1791 trial at the Old Bailey.

[4] *Commentaries on the Laws of England*, published in the 1760s

AIMS AND OBJECTIVES OF STUDY:

The aim of the research is to study doctrine of presumption of innocence with operation of the reverse burdens in the arena of criminal law. The focus is on the interplay between reverse burdens and presumptions of innocence, which is considered as an important right of accused facing criminal charges. The researcher also makes it clear that he is not advocating for absolute presumption of innocence nor that there cannot be any legal presumptions. The intent is to identify such reverse onus clauses which have the effect of erosion of right of the accused to be presumed innocent.

The objectives of present research work are as follows:

- To critically analyse the extent to which the principle of presumption of innocence has been recognised in India and whether it is a fundamental right under part III of The Constitution of India.
- To conduct comprehensive study of Indian Criminal Statutes, wherein reverse onus clauses have been inserted thereby affecting the presumption of innocence.
- To analyse and evaluate constitutional validity of reverse onus clauses in India with reference to Article 14, 20 and 21 of the Constitution of India.
- To conduct a comparative study of Presumption of Innocence in the countries like USA, Canada, UK, South Africa and several other countries.
- To analyse legal effect of provisions restricting right to get bail on presumption of innocence.

- To identify increasing tendency on the part of legislature to dilute the presumption of innocence, thereby affecting the fundamental right of accused to get fair trial.
- To study relevant cases of Hon'ble Supreme Court and different High Courts with critical review of the judgments.
- To study and analyse procedural safeguards essential for protecting the presumption of innocence.
- To suggest changes in existing laws to safeguard the presumption of innocence in real sense.

SIGNIFICANCE OF THE STUDY:

The legal burden of proving all necessary ingredients of an offence is on the prosecution from the commencement of trial till its conclusion. One would imagine that given the sacred status of presumption of innocence; it cannot be compromised in any circumstance whatsoever. Reverse onus clauses or reverse burdens, however, constitute an exception to this fundamental rule supplanting the 'golden thread' of criminal law with a presumption of guilt. Reverse onuses dilute the prosecution's legal burden to the extent that the prosecutor is required to prove only a minimum threshold (also referred to as the basic or predicate fact), which is the actus reus. Thereafter, based on the minimal amount of proof adduced, the culpability of the accused is presumed and the burden to establish absence of mens rea or actus reus is then shifted to the accused. The burden upon the accused in such cases, also becomes the persuasive or legal burden, because failure to discharge it will result in the conviction of the accused.

In India, one can easily notice the growing prominence of reverse burdens in many legislations. Whenever there is public resentment about increase of crime rate or protests against sensational incidents of crime, the response of the government usually is either to increase punishment prescribed to the offence (including prescribing of minimum punishment) or adding presumptions against the accused in such crimes or sometimes doing both. By doing so governments claim that the law has been strengthened. As a sequel to the protest of intellectuals against the judgment of the Supreme Court of India in Tukaram vs State of Maharashtra[5], (popular as "Madhura Rape" case) Section 114 A was introduced in the Evidence Act, in the year 1983. It was again amended after protests of post Nirbhaya incident all over the country. Similarly, to check the increasing dowry deaths of women, law was amended to include sections 113 A and 113 B in the Evidence Act, creating presumptions in cases of suicides by women and dowry deaths in the year 1983.

The Prevention of Corruption Act, 1988, Narcotic Drugs and Psychotropic Substances Act, 1985, Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989, Protection of Children from Sexual Offences Act, 2012, (hereafter POCSO Act) Negotiable Instruments Act, 1881 and Customs Act 1962 are some of the legislations which provides for reverse burdens. Those who support crime control model of justice administration do not hesitate having as many reverse burdens as required by the laws, but those who adhere to the values of justice system based on due process model in which protection of the right of the accused is given paramount importance, find it difficult to justify the rigorous reverse burdens which militate against time tested and widely honoured cardinal principles of criminal law. In order to show drastic nature of the reverse burdens, I cite the

[5] AIR 1979 SC 185

example of presumptions in the Protection of Children from Sexual Offences Act, 2012. Sections 29 and 30 of said Act read as follows:

Section 29 Presumption as to certain offence:

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

Section 30 Presumption of culpable mental state:

(i) *In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*

(ii) *For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.*

A plain and literal analysis of section 29 reveals that the prosecution need not adduce any evidence or prove any fact to presume that the accused has committed the offence. If a person is "prosecuted" for any of the offences mentioned therein, the court shall presume that the person has committed the offence. One cannot give any extended meaning than filing of challan/charge sheet to the word "prosecuted" occurring in the above section. Section 30 of the Act mandates a presumption regarding culpable state of mind. Thus, the combined effect of sections 29 and 30 of the POCSO Act is

that the court on filing of the charge sheet, shall presume the “actus reus” as well as “mens rea” of the offence and the burden is on the accused to prove that he has not committed the offence. Theoretically if no evidence is adduced on either side, in terms of Section 102 of the Evidence Act, court is bound to convict the accused for the offence under the POCSO Act for which the accused is prosecuted or charged. Another aspect that is to be considered is, in order to discharge the burden under section 30 of the POCSO Act, the accused shall adduce the evidence to prove his case beyond reasonable doubt and not merely by preponderance of probability.

The presumptions of the above kind are found in several statutes. Section 8A of The Dowry Prohibition Act, 1961 states that, where any person is prosecuted for taking or abetting the taking of any dowry under section 3, or the demanding of dowry under section 4, the burden of proving that he had not committed an offence under those sections shall be on him. Moreover, Section 16 of The Commission of Sati Prevention Act, 1981 states that, where any person is prosecuted of an offence under section 4, the burden of proving that he had not committed the offence under the said section shall be on him. Both the presumptions casts negative and heavy burden of proof on the accused. Such presumptions are unjust because of their draconian nature and requirement of higher degree of proof of innocence by the accused.

The Settled rule of the common law is that when the accused is burdened with proof of any fact, the degree of proof is always on the lines preponderance of probabilities and it is not beyond reasonable doubt. Requiring the accused to meet high standards of degree of proof is contrary to the values of criminal justice system and a clear threat to doctrine of presumption of innocence. The presumptions in Statute books, in the form similar to sections 29 and 30 of the POCSO Act violate the constitutional and human rights of the accused. The situation created by such presumptions

coerce the accused to give evidence in the court. The cardinal principle of evidence in criminal cases is that the accused is a competent witness and cannot be a compelled as a witness. Section 315 of the Code of Criminal Procedure, 1973, which declares the accused as competent witness has specific riders that he shall not be called as witness except on his request in writing and his failure to give evidence shall not be a subject of any comment by any parties or the court. Once the accused chooses to be a witness, in view of section 132 of the Evidence Act, he is not excused from answering any question on the ground that the answer will criminate him although it is provided that such answer shall not be proved against him in any criminal proceedings. The reverse burden clauses in the modern statutes are not compatible with the constitutional right against self-incrimination guaranteed under Article 20(3) and statutory right guaranteed in the proviso to section 315 of the Cr.P.C. Inevitable conclusion which follows is that, reverse burden clauses seriously impair the substantial rights of the accused.

In jurisdictions such as Canada and South Africa, the presumption of innocence has been accorded constitutional status, as it is a fundamental right in the Canadian Charter of Rights and Freedoms, and the South African Constitution, respectively. Consequently, reverse onus clauses have categorically been declared to be unconstitutional for abusing the presumption of innocence. Although the principle is not an explicit constitutional guarantee in the US, it has been read into the due process provisions of the American Bill of Rights contained in the 5th and 14th Amendments to the American Constitution. A high degree of constitutional protection has been accorded to the principle in the US by a strict application of the rational connection test in determining the validity of a reverse onus clauses.

The Indian Supreme Court has emphasised the importance of the presumption of innocence as enunciated in Woolmington case[6] by conferring the status of human right. The fact that the principle has not been expressly included as a fundamental right has, however, been used in combination with the public welfare justification to declare reverse onus clauses as constitutional. It is submitted that neither justification provides support for the constitutionality of these clauses. In addition, there exists sufficient reason for making the presumption of innocence a fundamental right. Since 1978, the Supreme Court has consistently engaged in an expansive interpretation of Art. 21 with numerous rights having been read into it such as the right to get fair trial and the right against solitary confinement, among others. Specifically, since the presumption of innocence is an integral part of 'due process', there exists valid ground for incorporating the principle as fundamental right by virtue of decision of Maneka Gandhi v. Union of India, which read 'due process' into Art. 21. The importance of this principle is also illustrated by its inclusion in various Human Rights conventions, such as the Universal Declaration of Human Rights, 1948 ('UDHR'), and the International Covenant on Civil and Political Rights, 1966 ('ICCPR'). Although international conventions are not binding, both the UDHR and the ICCPR hold immense persuasive value as the Supreme Court has held that constitutional principles must be interpreted in the light of international declarations/conventions to which India is a signatory.

Thus, in the opinion of researcher there is need of comprehensive research on the topic of Presumption of Innocence and Reverse Burden Clauses in India with Comparative Approach. Moreover, there is need to evolve comprehensive legal test to determine the constitutionality of reverse onus clauses in light of cardinal principles of

[6] Woolmington vs. DPP 1935 AC 462 at 481,

presumption of innocence, right to remain silent, right to life and personal liberty including fair trial and due process. Therefore, the researcher intends to assess the justifications and objections to reverse burdens clauses in light of these fundamental principles of law and values of a civilised democratic society.

AREA OF RESEARCH:

Criminal justice system of India during British era was administered in accordance with the common law of England. However, codification of principles of common law for application to Indian sub-continent by British Parliament, raised curtains for statutory regime in the country. By enacting the Indian Penal Code, 1860, the Indian Evidence Act, 1872 and the Criminal Procedure Code, 1861, the foreign rulers have provided for rule of law and uniform application of laws to all the subjects of this country.

The Indian Evidence Act, 1872, often described as a master piece of draftsman ship, despite having specific rules on presumptions and burden of proof of number of facts, did not specifically provide for presumption of innocence of the accused in criminal cases. Section 101 of the Act recognised the general principle that burden of proof lies on the person who would fail if no evidence at all is adduced on either side. However, it made clear provision in section 105 that the burden of proving existence of circumstances bringing the case within any of the general exceptions or within any special exceptions, is on the accused and the court shall presume the absence of such circumstances. A number of presumptions of facts and presumptions of law were incorporated into the Evidence Act by its authors. The conspicuous absence of the presumption of innocence in the

Evidence Act, reflects the jurisprudence and values existing at the relevant time. In India the right of accused to be presumed innocent until his guilt is proved beyond reasonable doubt is neither a constitutional right nor it is expressly recognised as a statutory right. However, inherent value of this right made it to acquire a higher status in administration of criminal justice system by the courts. Due to such recognition, the courts have been consistently insisting on proof of the accusation beyond reasonable doubt.

Principle of Presumption of innocence has been recognised in the Universal Declaration of Human Rights, 1948. Art. 11.1 thereof reads as under:

"11.1 Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

The International Covenant on Civil and Political Rights, 1966 to which India is a party states in Art. 9.1 that,

"No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law;"

The European Convention for the Protection of Human Rights and Fundamental Freedoms states in Art. 6(1) that every person charged has a right to a 'fair' trial and Art. 6(2) thereof states:

"Art. 6(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

Article 7 (b) of the African Charter on Human and People's Rights and Section 11(d) of the Canadian Charter of Rights and Freedoms mandate that the accused shall be presumed to be innocent till he is proved guilty.

All the above instruments declare the basic and fundamental human right which every person shall enjoy and it is the duty of the States to facilitate such enjoyment. Many countries have accorded presumption of innocence a status of constitutional right. The presumption of innocence shapes our approach towards fundamental values of right to life and personal liberty. Yet ironically, this golden thread of our criminal justice system has not been specifically incorporated in our Constitution or criminal statutes. It is entirely at the mercy of Judicial pronouncements. The Supreme Court of India has widely interpreted Article 21 of the Constitution, thereby bringing many rights including right of fair trial within the ambit of Right to life. However, presumption of innocence has not been raised to the level of fundamental right under part III of the Constitution. Hon'ble Supreme Court in the case of **Noor Aga Vs State of Punjab**[7] has held that, "Presumption of innocence is a human right as envisaged under Article 14(2) of the International Covenant on Civil and Political Rights. It, however, cannot per se be equated with the fundamental right and liberty adumbrated in Article 21 of the Constitution of India"

The narrow legislative and judicial approach towards principle of Presumption of Innocence has resulted in proliferation of Special Criminal Statutes restricting procedural safeguards of accused persons making conviction of innocent persons very much possible. Since last many years it is observed that, principle of presumption of innocence is being continuously diluted by inserting reverse onus clauses and restricting procedural rights of accused including right to get bail in the criminal statutes. With the help of reverse onus clauses, the burden is being cast upon the accused to prove certain essential ingredients of alleged offence. Hence there is need of critical

[7] **Reported in (2008) 16 SCC 417**

analysis of these principles in the context of Indian Criminal Laws with comparative study of International Trends.

REVIEW OF LITERATURE:

I have conducted review of literature through online and offline survey of scholarly articles, books, and other sources relevant to the area of research. Abstract/Summary of some of the research articles and research papers are as follows,

1. **The Presumption of Innocence and its Role in the Criminal Process**[8]

This article states that, presumption of innocence is a kind of restatement of the rule which is applied in criminal matters that public prosecutor has the burden of proving guilt of the accused. As researcher explained in this paper that burden of proof has two elements: the first element is evidentiary burden, i.e. producing evidence in support of one's allegation, while the second element relates to the burden of persuasion or legal burden, which is the party's obligation to convince the court on its side. The most commonly recognized qualification of the presumption of innocence is that it serves as a safeguard against wrongful convictions. It is the very nature of the consequences of being found guilty of a criminal offence that is believed to necessitate safeguarding the defendant from wrongful convictions, firstly, by adhering to the due process principle and, secondly, by burdening the prosecution with proving guilt.

[8] Article by Pooja Amaravathi and Ananya Mishra, International Journal of Law Management and Humanities, Volume 4, Issue 3, Page 1135 – 1149 DOI: https://doij.org/10.10000/IJLMH.11641)

2. The Presumption of Innocence and Reverse Burdens: A Balancing Act[9]

This article seeks to bring greater predictability to the law by identifying the relevant factors, and placing them in a principled and clearly structured framework. While shifting the balance, reverse burdens must maintain proportionality between the defendant's right to avoid erroneous conviction and the community's need for law enforcement. Even where an offence poses a severe threat to society, courts will be reluctant to uphold the reverse burden in view of increasing risk of erroneous conviction, unless such an error would not inflict too grave injustice on the defendant. In determining proportionality regard must be had to the ease or difficulty that either side would have in discharging the burden placed upon them.

3. Let Hundred Guilty Be Acquitted But One Innocent Should Not Be Convicted': Tracing the Origin and the Implications of the Maxim[10]

This article states that, the edifice of Indian Criminal justice system is based on certain fundamental maxims and beliefs. These maxims have been indoctrinated in the system to such depth that they have in fact led to the emergence of various presumptions. One of these is the presumption of innocence of the accused, requirement of proof beyond reasonable doubt in order to establish the guilt of the accused etc. The study is an attempt to go into the origin of the belief and to study the impact that these doctrines have created on the adjudication of criminal matters with a critical insight.

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[9] Article by Hamer David A., Cambridge Law Journal, Vol. 66, No. 1, p. 142, 2007, University of Queensland TC Beirne School of Law Research Paper No. 07-08, Available at SSRN: https://ssrn.com/abstract=1005784)

[10] Article by Jain Tarun (December 31, 2007) PRESUMPTIONS: DOCTRINES & APPLICATIONS, ICFAI University Publications, 2008, Available at SSRN: https://ssrn.com/abstract=1133070)

4. **Rethinking Presumption of Innocence Doctrine in India through a Minimum Interference Standard**[11]

In this paper researcher argued that courts should use their judicial discretion in granting bail and conditions imposed therein on a minimum interference standard (MIS). Under MIS the courts should only refuse bail when it is absolutely necessary in light of particular facts of the case. Researcher argued that under MIS, we need to develop 'trial as if innocent' standard which would demand a higher threshold for depriving liberty unless absolutely necessary for fair trial or until guilt has been established. It introduced the concept of probable guilt bias to rationalise how presumption of innocence is understood in Indian bail jurisprudence.

5. **Innocent Until Proven Guilty: The Origins of a Legal Maxim**[12]

This article deals with the history and origins of Legal Maxim 'Innocent Until Proven Guilty'. It refers to gradual evolution of the Noble principles in Anglo Saxon and American Jurisprudence.

Law Commission Reports

6. **The Trial and Punishment of Social and Economic Offences**[13]

This report deals with the effective implementation of Statues containing Socio- economic offences. The recommendations of the 47th Report of the Law Commission, 1972 suggest that, since offences relating to

[11] Article by Dembi Divyanshu, (April 15, 2021). Available at SSRN:https://ssrn.com/abstract=3953364)

[12] Article by Kenneth Pennington The Catholic University of America, Columbus School of Law, CUA Law Scholarship Repository.

[13] 47th Report of Law Commission Of India

narcotics, corruption and food adulteration threaten the 'health or material welfare of the community as a whole', special efforts are necessary for their enforcement. The Commission further emphasised that the injury to society is greater in certain offences against public welfare in comparison to crimes having an identifiable victim, such as murder. It was felt, therefore, that conformity with the traditional standard of proof impeded the State's efforts to prove the mental element that "undoubtedly exists" in such offences, preventing the State from effectively addressing and regulating escalating instances of such crimes.

7. Article 20(3) of the Constitution of India and the Right to Silence[14]

In this report analysis and comparative study of 'right to silence in India' is made based on recently decided English and European Court cases and current legal position existing in various countries like U.S.A., Australia, Canada, U.K. and China. The commission in its report has observed that, the right to silence has various facets. One is that the burden is on the State or rather the prosecution to prove that the accused is guilty. Another is that an accused is presumed to be innocent till he is proved to be guilty. The Commission recommended that, no change in the law relating to right to silence of the accused is necessary. The right is protected by Articles 20 (3) and 21 of the Constitution and sections 161 (2), 313 (3) and 315 of the Code of Criminal Procedure, 1973. If the changes made in U.K. or those proposed in Australia are introduced in India, such changes will be ultra vires of Articles 20 (3) and 21 of the Constitution of India. The commission while expressing its concern that, in recent times, basic principle that the prosecution has to prove the charge of guilt against the accused beyond reasonable doubt is being diluted by the legislatures in several statutes and

[14] 180th Report of Law Commission Of India

thus, recommended that no dilution of the existing right to silence need be made nor can be made.

8. **Report of Justice Malimath Committee on Reforms of Criminal Justice System-**

The report dealt with the need for Reform in the Criminal Justice System. The committee while dealing with standard of proof in criminal cases has observed that, there is no provision in the Indian Evidence Act prescribing a particular or a different standard of proof for criminal cases. The commitee recommended that standard of proof beyond reasonable doubt presently followed in criminal cases should be done away with and in its place standard of proof lower than that of 'proof beyond reasonable doubt' and higher than 'proof on preponderance of probabilities' shall be adopted. The Committee therefore favours a mid-level standard of proof.

Precedents

9. **Noor Aga v. State of Punjab**[15]

Hon'ble Supreme Court while upholding constitutional validity of reverse onus clauses introduced in Sections 35 and 54 of the Narcotic Drugs and Psychotropic Substances Act, 1985 held that;

"Presumption of innocence is a human right as envisaged under Article 14(2) of the International Covenant on Civil and Political Rights. It, however, cannot per se be equated with the fundamental right and liberty adumbrated in Article 21 of the Constitution of India. It having regard to the extent thereof would not militate against other statutory provisions (which, of course, must be read in the light of the constitutional guarantees as adumbrated in Articles 20 and 21 of the Constitution of India). The Act contains draconian

[15] **(2008) 16 SCC 417**

provisions. It must, however, be borne in mind that the Act was enacted having regard to the mandate contained in International Conventions on Narcotic Drugs and Psychotropic Substances. Only because the burden of proof under certain circumstances is placed on the accused, the same, by itself, in our opinion, would not render the impugned provisions unconstitutional."

10. Shaikh Zahid Mukhtar Versus The State of Maharashtra and Ors[16]

Hon'ble Bombay High Court while striking down the provision of Section 9B of Maharashtra Animal Preservation Act, 1976, has laid down four-fold test for determining the constitution validity of reverse burden clauses as under,

"213. We may now summarize the various tests which we have discussed above for sustaining a reverse burden in a criminal trial as constitutionally valid. They are as follows:

(i) Is the State required to prove enough basic or essential facts constituting a crime so as to raise a presumption of balance facts (considering the probative connection between these basic facts and the presumed facts) to bring home the guilt of the accused, and to disprove which the burden is cast on the accused?

(ii) Does the proof of these balance facts involve a burden to prove a negative fact?

(iii) Are these balance facts within the special knowledge of the accused?

[16] **MANU/MH/0670/2016**

(iv) Does this burden, considering the aspect of relative ease for the accused to discharge it or the State to prove otherwise, subject the accused to any hardship or oppression?

Only when these tests are satisfied, can one say that the casting of the particular burden does not detract from fairness or reasonableness or justness of the trial. Only then it would pass the test of Article 14 intrinsic to the guarantee of Article 21."

11. Vijay Madanlal Choudhary & Ors. Versus Union Of India & Ors[17]

Recently, Hon'ble Supreme Court while upholding the constitutional validity of reverse onus clause under Section 24 of The Prevention of Money Laundering Act, 2002 held that,

"96. Suffice it to observe that the change effected in Section 24 of the 2002 Act is the outcome of the mandate of international Conventions and recommendations made in that regard. Further, keeping in mind the legislative scheme and the purposes and objects sought to be achieved by the 2002 Act coupled with the fact that the person charged or any other person involved in money-laundering, would get opportunity to disclose information and evidence to rebut the legal presumption in respect of facts within his personal knowledge during the proceeding before the Authority or the Special Court, by no stretch of imagination, provision in the form of Section 24 of the 2002 Act, can be regarded as unconstitutional. It has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act. In any case, it cannot be perceived as manifestly arbitrary as is sought to be urged before us."

Research Gap:

[17] **2022 LiveLaw (SC) 633**

Many research articles have been written on the topic of general importance of Presumption of Innocence in criminal jurisprudence. However, comprehensive study of Presumption of Innocence with special emphasis on Reverse Clauses in India has not been conducted. During online survey of open access platforms like Shodh Ganga (Database of PhD thesis in India) and Shodh Gangotri (Digital database of PhD research proposals) I did not find any thesis on present subject. Hon'ble Supreme Court of India in the case of **Noor Aga Vs State of Punjab and others**[18] has observed that,

"The issue of reverse burden vis-a-vis the human rights regime must also be noticed. The approach of the Common Law is that it is the duty of the prosecution to prove a person guilty. Indisputably this common law principle was subject to parliamentary legislation to the contrary. The concern now shown worldwide is that the Parliaments had frequently been making inroads on the basic presumption of innocence. Unfortunately, unlike other countries no systematic study has been made in India as to how many offences are triable in the Court, where the legal burden is on the accused. In the United Kingdom it is stated that about 40% of the offences triable in the Crown Court appear to violate the presumption"

Therefore, the researcher intends to undertake such systematic study of reverse onus clauses in India, which cast either legal or evidential burden on the accused. The researcher will try to analyse all criminal statutes in India wherein, reverse onus clauses have been introduced. Comprehensive and critical study of Presumption of Innocence with special reference to increasing legislative tendency to dilute them by restricting procedural rights of accused is the need of the hour. Previous studies done on the subject are not comprehensive. Hence the researcher wants to fill that gap by conducting

[18] **(2008) 16 SCC 417**

present research, which will benefit all the pillars of democracy while enacting and implementing the criminal laws in correct perspective.

RESEARCH HYPOTHESIS:

Keeping in view the aims and objectives of the study following alternative and directional hypotheses has been formulated:

- "Increasing trend of insertion of reverse onus clauses in every criminal statute adversely affect the doctrine of presumption of innocence, which is a core value of our criminal justice system."

RESEARCH METHODOLOGY:

Research methodology is a way to systematically address the research problem. Proper methodological approach is essential part of every research. For conducting present research, the researcher proposes to use the Doctrinal and Qualitative method of research. The research is primarily analytical and it is a library based. It involves analytical study of existing laws, related cases and authoritative materials as a whole. It can be relatively considered as theory-testing research which endeavours to seek whether theory involved within the subject is so far valid or not. Doctrinal legal research deals with verifying existing knowledge on the legal issue. Doctrinal legal research boosts confidence of the judges, lawyers and the jurists. Backed by the massive knowledge acquired from the doctrinal legal research, judges can be confident about what they are doing and such conscious rulings of the court could result in development of new legal concepts. Doctrinal Legal research in proactive manner is very much essential to introduce new

concepts and positive changes in legal practice, judicial decisions, administration of justice and overall justice delivery mechanism.

As doctrinal legal research does not deal with merely counting the number of laws related to certain fact, quantitative approach of research does not meet the purpose of this sort of research. Doctrinal researcher thoroughly analyses the relevant legal texts to interpret existing laws regarding the particular subject. Thus, analytical, legal reasoning aspect of doctrinal research process is necessarily a qualitative one. Typically, a legal scholar undertaking doctrinal research takes one or more legal propositions as a starting point and focus of his study. Research then takes place in the law library, where the legal scholar tries to locate all relevant appellate decisions and all discussions of his proposition in treatises, texts, encyclopaedias and legal periodicals. After reading and analysing these materials, the researcher would formulate his conclusions and writes up his report. The report of the study may offer a new formulation of the action with reliable and logical legal concept.

DATA COLLECTION:

The study made through doctrinal research method is mainly based on data collection from secondary sources. Thus, while conducting present research with the help of doctrinal method of research the researcher would collect data from various research papers, reports including commission reports, journalistic writing in magazines, legal journals, published articles, national and international research documents, Acts, Rules, Books, judicial pronouncements, international declarations, covenants and workshop papers. He would further arrange various propositions in systematic order with analysis of data and study through reasoning or rational

deduction. The researcher would employ comparative Analysis method with critical analysis and evaluation of legislations and judicial decisions of different courts. For critical analysis pertinent secondary sources such as judgments of superior courts, juristic writings, scholarly books and legal articles published in journal would be consulted.

The researcher is well aware of the fact that doctrine of Presumption of Innocence has no territorial boundaries. It has been applied across the globe. Hence the happenings and recent legal trends in respect of presumption of innocence around the globe is of great use for research. The researcher shall gain access to relevant material on the problem at hand which is not strictly confined to Indian law. The researcher shall take intense efforts to collect data from sources such as-

Books: Central, State, and Institutional Libraries to explore the traditional mode of data collection through book reading and noting techniques.

Electronic books: eBooks are the modern source of data collection. Various governmental websites providing educational study material and policy documents shall be visited and reviewed.

Journal literature: The researcher shall use digital databases to explore relevant scholarly articles available under a free and paid subscription. Also, Google scholar's database is considered for research work.

Citation databases: UGC has introduced CARE listed journal system for improving the standard of research. Recognized journals/ citation-based databases like Scopus and Web of Science give an idea about the standard of research and authentic research material. The researcher shall refer to this source of data collection.

Websites: Websites of governmental organizations, international agencies and educational and research institutions, business organizations, etc. provide

diverse and updated information relating to the research topic which shall be taken into consideration by the researcher.

Grey Literature: Apart from the above-mentioned sources of data collection, the researcher may also come across some other sources of data that are either unpublished or do not have a justifiable source of information, or and not recognized as traditional sources of data collection. However, such data will be taken into consideration with caution for digging into the basic idea about the research topic.

LIMITATION:

In present study the researcher would critically analyse the doctrine of presumption of innocence and effect of reverse onus clauses on it in India. I would make comparative study of operation of Presumption of Innocence in other countries with India. However, study of reverse onus clauses would be limited to Indian Criminal Statutes. It is not possible to cover study of all the reverse onus clauses in other countries.

TENTATIVE SCHEME OF CHAPTERS:

This research voyage proposes following tentative scheme of chapters:

Chapter 1: Introduction

In this first chapter of the proposed research work, the researcher intends to introduce an outline of the research subject. It describes the significance of the topic, objective of the study, hypothesis formulated for the purpose and the methodology adopted for pursuing the investigation of research subject.

Chapter 2: Origin and Historical evolution of Presumption of Innocence

In this chapter researcher would discuss in detail where the concept of Presumption of Innocence originated and how it got evolved in different periods and jurisdiction with constitutional and other provisions.

Chapter 3: Presumption of Innocence in other countries

In this chapter researcher would make comparative study of Presumption of Innocence recognised in other countries like USA, Canada, UK, Africa, Australia, France. It would further analyse recent legal trends in those countries concerning presumption of innocence and reverse onus clauses.

Chapter 4: Presumption of Innocence in India

In this chapter researcher would examine nature of presumption of innocence, status of this doctrine in Indian criminal justice system and recognition of the rights based on this doctrine.

Chapter 5: Jurisprudential analysis of Reverse Onus Clauses and Presumption of Innocence in India.

In this chapter researcher would analyse all the criminal statutes which provide for reverse onus clauses with their consequential impact on Presumption of Innocence. This chapter will also examine how the Indian judiciary responds to this new challenge by focusing on two main issues: reverse onus provisions and statutory inroads into Presumption of Innocence.

Chapter 6: Provisions restricting right of Bail and some other threats to presumption of Innocence.

In this chapter researcher would analyse some other threats including provisions restricting right of bail in various statutes in India. It would be argued that the right of accused based on that doctrine of presumption of innocence shall be sustained and safeguarded.

Chapter 7: Conclusions and Suggestions

At the end of thesis researcher would summarise the work with focus on his findings and recommendations for safeguarding presumption of Innocence in India.

The aforesaid scheme of Chapters is tentative in nature, which may be modified, if later stages of research demands so in order to give justice to the subject under research.

WORK PLAN:

The researcher with his sincere efforts would try to complete the research work in 3 years with following time schedule–

Collection of data and study of origin of Presumption of Innocence	6 months
Critical analysis of Statutory Provisions containing reverse onus clauses	6 Months
The critical analysis of judicial decisions on the subject	1 Year
The academic formalities with writing of thesis under guidance of the research guide	1 year

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CONCLUDING REQUEST:

Thus, in light of aforesaid discussion, justification and evident research potential of the topic the researcher most respectfully request the RRC of Faculty of Law, SRTM University, Nanded for kind consideration and permission to proceed with the research with or without modifications, if any suggested by it.

Dr. Mangalsingh S. Bisen — Mr. Sachin S Patil

Research Supervisor — **Research Student**